

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

UNITED STATES OF AMERICA

v.

PERRY JOE LISTER

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CRIMINAL NO. 9:01-cr-00010-RC-KFG

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On August 23, 2016, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Perry Joe Lister. The government was represented by Frank Coan, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by federal public defender, Ken Hawk.

Defendant originally pled guilty to the offense of Possession with Intent to Distribute Cocaine Base, a Class A felony. The offense carried a statutory maximum imprisonment term of life. The United States Sentencing Guideline range, based on a total offense level of 29 and a criminal history category of IV, was 121 to 151 months. On August 14, 2001, District Judge John Hannah, Jr. sentenced Defendant to 121 months imprisonment followed by 5 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure and substance abuse testing and treatment. On September 29, 2010, Defendant's term of imprisonment was reduced to 120 months. On November 18, 2015, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was required to work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons. In its petition, the government alleges that Defendant has failed to obtain employment since the start of his term of supervised release.

Under the terms of supervised release, Defendant was further required to refrain from excessive use of alcohol and required not to purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. In its petition, the government alleges that Defendant submitted a urine specimen on January 4, 2016, which tested positive for marijuana. The government further alleges that on February 19, 2016; March 4, 2016; and March 15, 2016; the Defendant submitted urine specimens that tested positive for phencyclidine (PCP).

Based on 5th Circuit case law, the Court can find that illicit drug use constitutes possession. If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by submitting three urine samples that tested positive for PCP, and thus possessing PCP, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court shall revoke a term of supervision. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

The Defendant and the government agreed to resolve the petition whereby Defendant would plead true to the allegations referenced above. In exchange, the government recommended to the Court a sentence of 12 months and 1 day with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Perry Joe Lister be committed to the custody of the Bureau of Prisons for a term of imprisonment of 12 months and 1 day with no supervised release to follow. The Court further **RECOMMENDS** that Defendant receive credit for time served from March 31, 2016. If a state sentence is imposed for the conduct set forth in the petition, the federal sentence set forth herein

will run consecutively to that state sentence. The Court further **RECOMMENDS** drug treatment. The Court further **RECOMMENDS** that the place of confinement be Seagoville, Texas or if Seagoville is not possible, Texarkana, Texas.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Ron Clark for adoption immediately upon issuance.

So ORDERED and SIGNED this 24th day of August, 2016.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE